

Disability Law Service

advice and legal representation for disabled people

Disabled Consumers and the Equality Act 2010

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Please note that this factsheet does not cover the provision of financial or insurance services or transport providers. The Equality Act 2010 has different provisions for these services which are covered in our factsheets 'Financial Services and the Equality Act 2010', 'Insurance Companies and the Equality Act 2010' and 'Transport Providers and the Equality Act 2010'. Should you require information on these services please ask for copies of these factsheets.

Introduction

The Equality Act 2010 ('the Act') came into force on 1 October 2010 replacing most provisions of the Disability Discrimination Act. Part 3 of the Act sets out the duties of 'service providers' to those who have a 'protected characteristic'.

Meaning of 'Protected Characteristic'

- Disability
- Gender reassignment
- Pregnancy and maternity
- Race (including ethnic or national origins)
- Religion or belief
- Sex
- Sexual orientation.

Who is a disabled person under the Act?

In order to be protected by the provisions of the Act as a disabled person, you must show that you meet the definition as set out at section 6 of the Act. This states that:

“A person (P) has a disability if —

(a) P has a physical or mental impairment, **and**

(b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.”

People who have been diagnosed with cancer, HIV or Multiple Sclerosis or who are certified as being blind or visually impaired are automatically covered by the Act and do not need to demonstrate that they meet the above definition.

If you have not been diagnosed with one of the ‘automatically qualifying provisions’ as set out above, you will only meet the definition of ‘disabled’ within the meaning of the Act if you can answer ‘yes’ to four questions:

Question 1: Do I have an impairment?

To bring a claim you must have a physical or mental impairment. A mental impairment may be a learning difficulty or a mental illness, which is recognised by the medical profession.

Question 2: Does my impairment affect my ability to carry out day to day activities?

Day to day activities include the ability to:

- walk, sit, climb stairs, use public transport or get around indoors and outdoors unaided;

- use your hands or fingers to write, use a knife and fork, press buttons on a keyboards such as on a telephone;
- place food into your own mouth or pour water into a glass;
- control your bowels or bladder;
- lift, carry or move everyday objects such as a kettle of water, bags of shopping or a chair;
- talk, hear or see;
- remember familiar people and places, organise simple activities, learn new things and understand spoken or written instructions such as a short recipe; **and**
- understand physical danger and so, for example: be able to cross the road safely or tell by touch if something is very hot or cold.

If you have an impairment that affects you in ways not included in this list you may still be covered by the EA. However you would need to show what activities are affected and how these are affected. For example: if your impairment affects your ability to eat or to sleep these may well be considered as day-to-day activities.

Question 3: Does my impairment have a substantial adverse effect on my ability to carry out day to day activities?

Your impairment must have more than a minor effect on your day to day activities. You should, however, discount any treatment or medication you are having when answering this question. For example: if you are a diabetic who takes insulin you should consider how your day to day activities would be affected if you did not take your insulin.

If you have a progressive condition, i.e. a condition which will get worse with time, such as HIV, Multiple Sclerosis, Muscular Dystrophy or lupus, you will be considered to be a disabled person from the moment your condition has **some** effect on your ability to carry out normal day to day activities,

however slight that may be to start with. This is provided that the condition could well progress to a point where the effects become substantial.

Question 4: Is the effect of my impairment long-term?

Long-term means that your impairment has either:

- lasted for at least 12 months; **or**
- is likely to last for at least 12 months; **or**
- is likely to last for the rest of your life.

If your impairment had a substantial adverse effect for less than 12 months but is likely to recur, then your condition will be treated as long term. This is relevant if you have a fluctuating condition such as rheumatoid arthritis or depression. A condition will be seen as 'likely' to recur if this could well happen.

If you can answer 'yes' to all of the above questions then it is likely you are a disabled person under the EA. It can sometimes be very difficult to decide whether or not you do meet the criteria. Please note that being in receipt of a disability related benefit will **not** necessarily mean you would be considered disabled within the meaning of the Act.

What conditions are excluded by the Act?

- Addiction to alcohol / nicotine / non-prescription drugs;
- Hayfever;
- Tendency to set fires / steal / commit physical or sexual abuse of others;
- Exhibitionism;
- Voyeurism; **and**

- Tattoos and body piercing.

Rights for non-disabled people

The Act has also extended protection to those who have an association with a disabled person in certain circumstances. Therefore carers, partners, family members of a disabled person have some protection from the Act. However, these individuals are not covered by all of the provisions of the Act. This point is further expanded upon below.

In addition, the Equality Act has for the first time extended discrimination legislation to those who are perceived to have a protected characteristic e.g. someone who is thought to have a disability but does not actually have one.

Meaning of 'Service Provider'

The definition of 'service provider' within the Act is extremely wide as it is simply defined as:

'Any organisation which provides goods, facilities or services to the public.'

The provision can be either paid for or be free and it does not matter how large or small the organisation is. It will therefore include most organisations that deal directly with members of the public.

Examples of service providers include shops, commercial services, clubs and associations and also include public amenities such as parks, public buildings, leisure facilities and railway stations.

What is not a 'service provider'?

- Organisations that do not interact with individuals. This would include a manufacturer that sells goods only through retailers (although the retailer would be considered to be a service provider) or an investment bank that deals only with other companies and not with the public;
- Private clubs with less than 25. This would be groups such as book clubs, walking groups etc;
- Persons exercising their judicial functions (i.e. a judge acting in their judicial capacity);
- Providers of services outside the UK;
- Providers of transport by air (although airports are included as well as any booking provisions for flights).

What is unlawful treatment under the Act?

Under s.29 of the EA it is unlawful for a service provider to discriminate against a disabled person:

- By not providing them with a service or by withdrawing that service; **or**
- By providing them with a lesser service or on worse terms than they would provide to a non-disabled person.

Discrimination may occur in six different ways.

1. Direct Discrimination

The definition of direct discrimination is set out in section 13 of the Act and will occur if a service provider treats a disabled person less favourably because of their disability. To show direct discrimination the disabled person needs to

compare their treatment to someone who is not disabled but is otherwise in the same circumstances.

An example of direct discrimination would be if an individual is refused entry to a club because she is in a wheelchair and the doorman thinks she will not fit the club's 'image'.

This form of discrimination applies not only to disabled people but also to those associated with the disabled person and those who are perceived to have a disability. Therefore a carer, partner, family member can also bring a claim for direct discrimination. Using the example above, if the individual was with her boyfriend and he was also refused entry to the club, he may also have a claim for direct discrimination within his own right.

Another example of direct discrimination given by the Equality and Human Rights Commission is of a person is not picked for his local cricket club team as it is assumed he will be unable to play as he is the primary carer for his mother.

Direct discrimination cannot be justified by the service provider.

2. Discrimination arising from a disability

This is set out in section 15 of the Act. This form of discrimination will occur when a disabled person is treated unfavourably, not because they have a disability but because of something connected with their disability. For example, an individual is refused access to a restaurant because it is busy and the owner is concerned his wheelchair will get in the way.

This form of discrimination will only arise if service provider knows or can be reasonably expected to know that a person is disabled. The service provider only needs to know that a person has a disability, not what the effects are of a

disability. For example, a service provider would need to know that a person has multiple sclerosis but not necessarily know that the multiple sclerosis affects a person's balance, or can make them fatigued.

It may be possible to justify discrimination arising from a disability if the service provider can show that it is a proportionate means of achieving a legitimate aim. A legitimate aim will be any lawful decision a service provider makes in running a business or organisation.

If a service provider can demonstrate that they are trying to achieve a legitimate aim they will still need to show that the discriminatory effect is proportionate. If there is a discriminatory effect and the sole reason given by the business or organisation is to reduce costs, it is likely to be unlawful.

What is fair and reasonable will depend on the individual circumstances. However, at the very least the service provider will be expected to have looked at whether there are other ways of doing things which would avoid discrimination.

In the previous example the restaurant probably thought it could justify the discrimination by arguing that on that occasion, due to the number of people in the restaurant, there was a concern that in allowing the individual to come into the restaurant it would pose a health and safety risk e.g. because the only place to seat the person was across a route to a fire exit. However, the restaurant would have to have shown that it had considered whether there was anywhere else to seat the individual concerned. On the facts it is unlikely that the restaurant would get away with it.

It is also unlikely that the service provider will be able to justify their actions if they have not had regard to the duty to consider reasonable adjustments (please see further information about this below).

3. Indirect discrimination

The definition of indirect discrimination is set out in section 19 of the Act. This form of discrimination will occur when a service provider applies a policy or a criterion that places disabled persons at a disadvantage. For example: a local sports centre has a policy that it only allows people to use the swimming pool if they can swim a length of the pool. People with certain disabilities, such as chronic fatigue syndrome, may have difficulty swimming a length of the pool. In refusing to allow someone with chronic fatigue syndrome to use the pool, the sports centre would be indirectly discriminating against that individual.

A service provider does not need to know that person is disabled in order for this form of discrimination to apply. However, as with discrimination arising from a disability, indirect discrimination can be justified. Therefore, with the previous example, the sports centre may be able to justify its policy if it can demonstrate it would be a health and safety risk to allow individuals to use the pool if they cannot swim a whole length. However they would also need to show that they could not make any reasonable adjustments to remove the health and safety risks.

4. Reasonable adjustments

Under section 20 of the Act, service providers have an obligation to make reasonable adjustments where, if the adjustment were not made, a disabled person would be at a substantial disadvantage compared to people who are not disabled. This is a very low threshold as '**substantial**' is defined as being '**more than minor or trivial**'. Therefore it will not take much for this duty to be triggered.

Service providers are expected to make adjustments to:

- Policies.
- Procedures.

- Providing of auxiliary (additional) aids and services.
- Adjustment to physical features.

What is 'reasonable' will depend on a number of factors including:

- How effective the adjustment would be in improving an individual's situation.
- How practical it is to make the adjustment.
- How much it costs to make the adjustment.
- How long it will take to make the adjustment.
- How much disruption would be incurred in making the adjustment.
- The resources available to the service provider.

Larger service providers will generally be expected to take more steps to make adjustments as opposed to small independent organisations that may not have the same level of resources of funding available to it.

The duty to make reasonable adjustments is an anticipatory duty. A business cannot state that it does not need to make an adjustment as it does not have any customers who have a disability. The service provider should be considering who may try and access the service in the future. Likewise a service provider should not wait for a disabled person to try to use their service before considering what adjustments may need to be made. They should anticipate that disabled people may wish to use their service and make the necessary adjustments to enable them to do so.

The cost of making the adjustment cannot be passed on to the disabled person.

An example of a reasonable adjustment to a policy would be guest house has a practice of serving food between 7 – 9 am. A guest is staying at the house and needs to take medication mid morning before he eats. It would be likely to be reasonable for the guest to be served breakfast later in the morning. If the

owner refused he could be found to have discriminated against the guest by failing to make a reasonable adjustment.

Where a disabled person is placed at a substantial disadvantage because of a physical feature, such as stairs in a shop, the service provider will be expected to take reasonable steps to help the disabled person to avoid the disadvantage, such as providing an alternative route of access.

Alternatively, if they are unable to make adjustments to the physical feature, they should make reasonable alternative methods of providing the service in an alternative way, such as by offering home visits.

5. Harassment

The Act has extended the provision of harassment to outside the field of employment for the first time. Under the DDA, it was only possible to bring a claim for harassment if it occurred with the work place.

The definition of harassment is found in section 26 of the Act. There are three types of harassment listed which are as follows:

- harassment related to a protected characteristic;
- sexual harassment;
- less favourable treatment because of a person's reaction to harassment.

For harassment to have occurred, the conduct must have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. It is unlawful whether it is intended or not.

In deciding whether harassment has taken place, the court will take into account the disabled person's perception of the conduct, the circumstances of the conduct being complained about and whether it is reasonable to consider the conduct amounts to harassment. The conduct does not necessarily need to have been directed at the disabled person.

A claim for harassment can also be brought by a person perceived to have a protected characteristic as well as those associated with a disabled person.

An example of harassment would include a husband who cares for his wife who has Alzheimer's disease. He overhears a shop assistant talking about his wife in a derogatory and offensive manner. Both the husband and his wife could bring a claim for harassment even though the comments were not made directly to his wife.

6. Victimisation

The provisions for victimisation are set out in section 27 of the Act. It states that a service provider cannot victimise an individual for making an allegation or bringing a claim for disability discrimination. Furthermore, a service provider cannot victimise an individual who gives evidence in support of a claim under the Act.

An example of victimisation would be if an individual brings a claim for failure to make reasonable adjustments against a local restaurant and is successful in her claim. She and her husband are subsequently refused entry to the restaurant. This is likely to be victimisation.

How to enforce your rights under the Act

If you are concerned that you have been discriminated against by a service provider you should first write a letter to the provider setting out your concerns. In the letter you should identify the type of discrimination that you believe has occurred and what action you would like the service provider to take. This may include asking the service provider to adjust its policy or provide a ramp so that you can access the shop. You should also ask the service provider to respond within a specified time, usually 14 days.

You could also consider sending a disability questionnaire to the service provider requesting information on their policies towards disabled people. Such a questionnaire will assist you in determining the strengths and weakness of your case. Examples of the questions you may wish to pose in the questionnaire can be found on the Equality and Human Rights Commissions website (www.equalityhumanrights.com). The questionnaire should be sent within six months of the act of discrimination and should be done before you think about issuing a claim in the Courts. The service provider then has eight weeks in which to complete and return the questionnaire. In the event the service provider refuses, the Court can draw inferences from the provider's refusal to complete the questionnaire.

In the event you are unable to resolve matters with the service provider, you may wish to consider issuing a claim for disability discrimination in the County Court. Such claims must be issued within six months less one day of the act of discrimination. If you win in the County Court, the Court can order the service provider to pay you compensation or can issue an injunction forcing the service provider to take steps to avoid discrimination in future.

If you are considering bringing a claim in the County Court, you should seek legal advice first. This is because you are at risk of costs in the County Court. This means if you lose your case, the Court can ask you to pay the service providers legal costs for defending the claim.

As an alternative to county court proceedings you can also seek redress through the Equalities Mediation Service ('EMS'). Cases are referred from the Equality and Human Rights Commission to EMS. EMS will contact both parties to arrange a meeting in order to try and seek an agreement between parties. The agreements can be wide ranging and include remedies which cannot be ordered by the Court, such as asking the organisation to apologise. Other remedies include compensation and a requirement for organisations to change its policies and procedures to prevent discrimination from occurring again in future. If an agreement is reached through EMS it will be in 'full and final settlement'. This means you then cannot pursue the same matter through the County Court. If you are unable to reach an agreement through mediation then you may still be able to pursue the matter through the County Court. If you have tried mediation through EMS and it has failed, your deadline to submit a claim to the County Court is extended by a further three months. However, this must be agreed with the Equality and Human Rights Commission. In order to seek assistance through EMS, please see details at the end of this factsheet.

How can I get help?

If your income is low, and you do not have much money saved, you may be able to get free advice and assistance from a specialist disability discrimination solicitor under what is known as the 'Legal Help Scheme'.

This scheme covers the cost of some of the legal work involved in making a discrimination claim. However, it does not cover all costs. In particular, it does not cover the cost of having a lawyer attending court. If you need someone to go to court with you then you can apply for Legal Aid.

To find a specialist disability discrimination solicitor in your area who can provide help under the free Legal Help Scheme, you can contact the **Legal**

Services Commission on **0845 608 1122** or search its database on the internet at: **www.clsdirect.org.uk**.

Some solicitors may also be prepared to represent you on a 'no win, no fee' basis. For more information about solicitors you should contact the **Law Society** on **020 7242 1222**.

Law Centres and Citizens Advice Bureaux may also be able to help you free of charge. Details about the Law Centre nearest to you are available from the **Law Centres Federation**. Details of your local CAB can be obtained via the **National Association of Citizens' Advice Bureaux**. Contact details for these organisations can be found at the back of this guide.

Useful organisations:

Disability Law Service

Disability Law Service is a registered charity offering free confidential legal advice on disability discrimination to disabled people. It is able to take on certain cases on behalf of disabled people.

In addition to an disability discrimination law advice, it can also offer advice in the following other categories of law: community care, employment, welfare benefits.

39–45 Cavell Street

Whitechapel

London E1 2BP

Telephone: **020 7791 9800**

Fax: **020 7791 9802**

Textphone: **020 7791 9801**

Email: **advice@dls.org.uk**

Equality and Human Rights Commission

The Equality and Human Rights Commission is a national organisation set up by the Government to monitor and tackle discrimination. It operates a telephone helpline for people with discrimination problems. The Equality and Human Rights Commission also publishes many useful guides and leaflets, which can be obtained via its helpline. In some cases, the Equality and Human Rights Commission will advise and represent people who have discrimination claims. It can also refer cases to the Equalities Mediation Service to settle cases via mediation.

Equality and Human Rights Commission England

Equality and Human Rights Commission Helpline

Freepost RRLG-GHUX-CTR

Arndale House

Arndale Centre

Manchester M4 3EQ

Telephone: **0845 604 6610**

Textphone: **0845 604 6620**

Fax: **0845 604 6630**

Website: **www.equalityhumanrights.com**

Opening times: Monday, Tuesday, Thursday, Friday 9am–5pm; Wednesday
9am–8pm (last call taken at 7:45pm)

Equalities Mediation Service

Mediation Works

16 Queen Street

Wellington

Shropshire

TF1 1EH

Tel: **01952 224285**

Fax: **01952 224289**

Email: **ems@mediation-works.co.uk**

Website: **www.equalities-mediation.org.uk/**

This can offer an alternative means of resolving disputes without requiring recourse to the courts. A referral to this service must be made through the Equalities and Human Rights Commission, please see contact details above.

Legal Services Commission

The LSC can give contact details of solicitors and other organisations that can advise and assist you, subject to eligibility, under the free Legal Help Scheme.

29–37 Red Lion Street

London

WC1R 4PP

Telephone: **0845 608 1122**

Website: **www.clsdirect.org.uk**

RADAR

Offers legal advice on the DDA.

12 City Forum

250 City Road

London EC1V 8AF

Telephone: **020 7250 3222**

Textphone: **020 7250 0123**

RNIB

Offers legal advice to people with visual impairments.

224 Great Portland Street

London W6 9DG

Telephone: **020 7388 1266**

The Law Centres Federation

Provides details of local Law Centres which can give legal advice and assistance with disability discrimination claims.

Duchess House
18–19 Warren Street
London W1P 5DB
Telephone: **020 7387 8570**

National Association of Citizen's Advice Bureaux (also known as 'Citizens Advice')

Provides details of local CABs which can give legal advice and assistance with disability discrimination claims.

Myddleton House
115–123 Pentonville Road
London N1 9LZ
Telephone: **020 7833 2181**
Fax: **020 7833 4371**
Website: **www.nacab.org.uk**

The Law Society

Provides details of solicitors who can advise on disability discrimination cases.

Ipsley Court

Berrington Close

Redditch

Worcestershire B98 0TD

Telephone: **020 7242 1222**

Website: **www.lawsociety.co.uk**

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

The Disability Law Service

Telephone: **020 7791 9800**

Textphone: **020 7791 9801**

Fax: **020 7791 9802**

Website: **www.dls.org.uk**

Email: **advice@dls.org.uk**

Or write to us at: 39 – 45 Cavell Street, London E1 2BP

Community
Legal Service



advice^{UK}
MEMBER



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